

## REMARKS

This paper is in response to the Office Action of Sept. 22, 2008. Reconsideration in view of this amendment is respectfully requested. The Examiner is thanked for reconsidering the prior art and for the telephone interview of November 26, 2008, and for the follow-up interview of January 21, 2009. As discussed, the Applicants are hereby submitting an RCE to allow the Examiner to fully consider the claims and art.

The Office action cited matter that might raise new matter issues. The Examiner is kindly referred to Pages 15 and 16, as well as figures 2, 3 and 4 of the as-filed application. The Applicants submit that disclosure was present for the identification being done from a defocused image produced by the defocused image captured device. Examples of ways to defocus the image capture device were also provided in paragraph [0038]. The Examiner is respectfully requested to kindly withdraw this rejection. The rejection under 35 USC Section 112, first paragraph, is also traversed for the same reasons.

Claims 1-5 and 34 were rejected under 35 USC § 103(a), as being unpatentable over Girod (US 6,677,987), in view of Levine et al. (6,709,108).. This rejection is respectfully traversed.

Girod is concerned with a system that allows interaction with between a user's light source and a camera. The teachings define a system that relies on the comparison of modulation of light, as detected between frames. Pixel luminance is key to Girod, as its algorithm requires specific focus on pixels detected between frames, before a threshold is reached. See step 618. If the threshold is not reached, the process continues analysis of the pixels in later frames, as shown in Figure 6. Additionally, based on the accurate detection of pixel luminance, relative to other pixels in a given area, decisions are made regarding confidences/likelihood of pixel changes. Consequently, the *clarity and brightness* of each pixel is important to Girod. Emphasis on clarity and brightness is explained by Girod, at Col. 3, line 58- Col. 4, line 4.

In the last office action, the Examiner indicated that the Applicant's traversal of Girod was persuasive, thus issuing a new rejection, when combined with Levine et al.

In the Interview of Nov. 26, 2008, the Applicants pointed out that Levine is concerned with examining the human eye, and methods for identifying aberrations of a human eye. The basic structure of Levine's teachings is shown in Figure. 3A. As shown, the eye 1 is placed for examination. In the interview, the Examiner explained that Levine is teaching the defocusing of images, of the extended source, by varying the focal power of the foreoptics. See col. 40. However, Levine is examining the wavefronts, not the pixels. The extended source is the image that is projected onto the human eye. The extended source is then reflected back, where it is phase compensated, and then sent to a wavefront sensor. Then, finally data about aberrations is provided to a display. Thus, nature, function, and way processing is carried out by Levine is different, and to summarize some of these differences, the following list is provided.

- Levine does not examine pixel data: Even if the extended source is defocused (*which it is not*), the wavefronts are compensated, and the compensated wavefronts are what is detected. The newly amended claims define that defocusing the image capture device produces an expanded region of pixels around the light source. The claims were also clarified to define the expanded region of pixels around light increases the pixel data usable to identify the light source during the tracking. Again, Levine does not examine pixel data. In fact, Levine states in Col. 6, that pixel examination *is not recommended*, as intensity measurements are not accurate when examining the human eye.
- Levine does not examine what is captured: Even if one omits the fact that compensation is required by Levine, there is no examination of what is captured. In contrast, the claimed invention concentrates on examining the captured image, which is defocused. If one were to compensate the image that was captured, then the effect of defocusing of the captured image would be nullified.

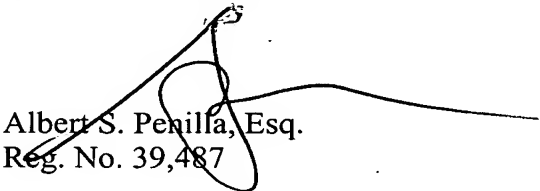
In the instant claims, to "*defocus*" the captured image, is *opposite* to the teachings of Girod. Thus, combined with Levine, there is not motivation to combine the teachings.

In view of the foregoing, the Applicant respectfully requests reconsideration and allowance of the pending claims.

If the Examiner has any questions concerning the present amendment, the Examiner is kindly requested to contact the undersigned at (408) 749-6903. If any other fees are due in

connection with filing this amendment, the Commissioner is also authorized to charge Deposit Account No. 50-0805 (Order No SONYP030). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,  
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